



File No. O. L. R. C.

Bom. /47 (Part I)
Legal DEPARTMENT
A BRANCH

File
Subject:—

Opinions under the Bombay
Land Revenue Code 1879.

(For subsequent papers please see
Part II)

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E.

File No. O. L. R. C. Bom /47
Std. Sectt. Slip 24 B o.

(Part I).

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C O N T E N T S .

Legal Department File No. Q.L. R.C.Eon./47 Pt.I

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Opinions under the Bombay Land Revenue Code, 1879.

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30.	O.No. <u>204</u> 24.8.1947. O.No. <u>215</u> 20.6.1947.	Whether the Collector's order of the year 1942 regarding grant of alluvial land can now be revised so as to enable the applicant who is the owner of the land to XXXXXX XXXXXX	

No 11492 dated 17-12.-46

Sub

Submitted with reference to R.D. Dy. Secy's note dated 14-12-1946 at p. 21 ante. One Mrs. Harroth offered to purchase plot No. 42 in Suburban Scheme No. XVI, Andheri Sector of Shahar, on the conditions mentioned in her application dated 15-12-43. The sale was sanctioned in her favour on the conditions specified in Govt. Letter R.D. dated 3-7-1944 at p. 11 ante. The Solicitors of the purchasers have now applied to the Collector B.S.D. stating that the plot requires to be filled up and the filling may be done by Govt. The D.S.R.D. is of the view Government is not legally bound to do filling. The R.L.A. is requested to advise whether this view is correct.

2. There is nothing in the application, made by Mrs. Harroth (p.7) or in G.L.R.D. dated 3-7-1944 (p.11) sanctioning the sale to suggest that the plot which she had offered to purchase would be filled in at Govt. expense. By condition (b) in the application she had agreed to execute an agreement in form III appended to the Land Revenue Rules (1921). The said form also does not support her claim. Consequently the view expressed by the Dy. Secy. R.D. that Govt. is not legally bound to fill up the plot at their cost appears to be correct.

3. It appears however from the Collector's letter at p. 15 ante that the condition about the filling of the plot was deleted from the offer for the purchase of the plot. It is not known what were the conditions on which the plot was offered for sale. Perhaps the R.D. may be asked to state this. It appears from para 2 of the letter dated 8-2-1944 at p. 1 ante that the cost of filling the plots was usually borne by Govt. Perhaps the R.D. may be requested to throw light on this. Before a definite opinion is expressed the R.L.A. may be requested to supply information on the two points above.

Sd/-

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V.M.D. / 17-5
4c.

Attention is invited to R.D. letter No. 9617-G- 39, dated 8-2-1944 addressed to the Collector, B.S.D. informing him that in view of the general rising trend in the property market, the scheduled prices of plots in Suburban Schemes should be increased by 25p.c. and in respect of Suburban Scheme No. III-Chembur by 50 p.c. In para. 3 of this letter, Govt. directed the Collector to ascertain from the intending purchasers (a list of which was sent) whether they were willing to pay the enhanced rates fixed for the plots, and to resubmit to Govt. ~~directed~~ these cases. It is important to note that in para.2 of the said letter Govt. accepted the Collector's view that the cost of filling the property should be borne by Govt. as hereto fore.

p. 1-2 ante

Pp. 3-4 do.

Before the said letter was issued by Govt. Mr. T.K. Marrott had made an offer on 15-12-1943 for Plot No. 42 in S.S. NO. XVI-Andheri Sector measuring 827 sq. yds. at the scheduled rate of Rs. 4/- a sq. yard and paid a deposit of Rs. 200/-. It will be noticed that the list sent by ~~Govt.~~ Govt. to the Collector, B.S.D. included reference to Plot No 42 in S.S. No. XVI-Andheri Sector

Vide p. 7 do

P. 4 do.

It appears that in vide item No41 pursuance of the said Govt. letter No. 9617-G/39, dated 8.2.44, the Collector after having ascertained from Mrs. Marrott whether she was willing to purchase the Plot in question at the enhanced rate fixed by Govt. informed Govt. that Mrs. Marrott agreed to purchase the plot at the increased rate of

P.1 do

Vide p. 9 do

Office of the R.L.A.

Seen and returned.

The view taken by R.D. is correct.

Sd/- - D.V.Vyas.

Remembrancer of Legal Affairs.

U.R.to R.D. No. 1821, dated the 22nd February 1947.

V.M.D./17-6

4c.

Office of the R.L.A.

Under section 50-A(1) of the Bombay District Municipal Act, 1901 and section 64(1) of the Bombay Municipal Boroughs Act, 1925 it would be competent for the Collector to decide claims to property by or against a municipality. If the municipality alleges any encroachment on its road or if the alleged encroacher sets up any right to the encroached area or denies encroachment, it would be open to the Collector to decide the claim and if any encroachment is detected, to levy assessment thereon under subsection (3) of section 48 of the Land Revenue Code, 1879. If however neither the municipality nor the alleged encroacher wants the Collector to decide the claim, it would not be possible for the Collector to hold an enquiry and decide under the aforesaid provisions of the Municipal Act. In such cases it appears that the Collector will have to hold an inquiry under section 37(2) of the Bombay Land Revenue Code by virtue of right given under section 48 (3) and levy assessment on the encroached portion of the road (see R.L.A.'s opinion No. 1470 dated 25-2-1944).

Sd/- D.V. Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1259 dated the 7th February 1947.

V.S.D. /17-5.

to.

Office of the R.L.A.

While considering the question whether the Hope Rules of 1867 applied to the X khadi land of Surat, the R.L.A. in his opinion No. 4693, dated the 15th May 1940 expressed the view that the Hope Rules were no longer in force. The Commissioner, Northern Division ~~in~~ in his endorsement dated the 17th September 1946 has stated that :

"The Municipality is entitled to the concession given to it under rule 8 of the Hope Rules and the view that the Hope Rules are superseded and are no longer in force and the Municipality is not entitled to any share in the occupancy price is erroneous, as the proceedings of 1867 are in the form of a contract giving certain right to certain municipalities which undertook survey of cities under Act ~~IX~~ IV of 1868".

The Revenue Department agreeing with the view of the Commissioner, Northern Division has requested the R.L.A. to reconsider his opinion.

2. The rules for assessment of lands in the town of Surat drawn up in 1867 by Mr. T.C. Hope, the then Acting Collector of Surat, (which were known as Hope Rules) were sanctioned by Government in Government Resolution, Revenue Department, No. 862, dated the 23rd February 1867. Bombay Act I of 1865 provided for the survey demarcation and assessment of lands held under Government Bombay Act IV of 1863 (Act for City Surveys and amendment of Bombay Survey and Settlement Act, 1868) was enacted to make further provision regarding the application of Bombay Act I of 1865 to Towns and Cities. By section I of the former Act, Bombay Act I of 1865 was declared applicable to Towns and Cities. Section 3 thereof provided that subject to such rules as may from time to time be prescribed by Government, the assessment on assessable lands in Towns and Cities, whether imposed under Bombay Act I of 1865 or any other Act for the time being in force, may be fixed for a term of years or in perpetuity, anything in section 28 of Bombay Act I of 1865 notwithstanding. By Government Notification in the Revenue Department, dated the 10th February 1869, it was notified that the rules for assessment sanctioned for the City of Surat by Government Resolution, Revenue Department, No. 862 dated the 23rd February 1867 i.e. the Hope Rules, were the rules according to which assessment should be imposed under section 3 of Bombay Act IV of 1868. The Hope Rules were thus given statutory force by being deemed to have been made under section 3 of Bombay Act IV of 1868. Both Bombay Act I of 1865 (except sections 37 and 38) and Bombay Act IV of 1868 were repealed by section 2 read with Schedule A to the Bombay Land

Revenue Code, 1879 (Bom. V of 1879). The Code has been enacted to consolidate and amend the law relating inter alia to, the assessment and recovery of land revenue. The object of consolidation is to collect the statutory law bearing upon that subject and to bring it upto-date. Section 214 of the Code empowers the Provincial Government to make rules to carry out the purposes and object of the Act. Clause (b) of sub-section(2) of that section empowers the Provincial Government to make rules regulating the assessment of land to the land revenue and the alteration and a revision of such assessment and the recovery of land revenue. The Bombay Land Revenue Rules, (1921) were accordingly made by Government. The Hope Rules, as pointed out above, were given statutory force under Bombay Act IV of 1868 which has since been repealed. Consequently in view of the enactment of the Land Revenue Rules will now have to be deemed to have been superseded, and they cannot be considered to be in force any longer. The view expressed by the R.L.A. in his opinion No. 4690, dated the 15th May 1940 is correct.

3. Rule 8 of the Hope Rules provides

"The Municipality has received from Government the privilege of obtaining whatever sums it can by selling the right of occupancy of lands of all descriptions, wherever it may still be vested in Government."

The concession obtained by the Municipality under this rule is in no way affected by the repeal of the Hope Rules since the principle contained in section 6 (c) of the Bombay General Clauses Act 1904 will apply. The question whether the concession under rule 8 was available to the Municipality notwithstanding the repeal of Hope Rules was not considered by the R.L.A. in his opinion No. 4690, dated the 15th May 1940. The view taken by the Commissioner, Northern Division in this respect is correct.

Sd/- D.V. Vyas.
Remembrancer of Legal Affairs.

U. O. R. to R. D. No 2404, Dated the 12 th March 1947.

Submitted for signature.

2. with reference to R.L.A's marginal note on page 33 it submitted that the wording follows the language of section 3 of Bombay IV of 1868.

Sd/-

10-3

A.S. Sd/-

10-3

A.L.R. Sd/- R.T.K.

11-3

L.D.R.I. No. 11364 dated 16-12-46.

Submitted.

2. Please see the letter from the Commr. H.D. at p. ante and the note of U.S.R.D. at p. 5. The facts of the case are as follows :-

By an auction sale, a plot of land measuring 140 Sq. yds. (shown as C.D E F G in sketch at p. 41 of case papers) has been granted to one Rasul Musa Kagda subject to conditions contained in the memo of conditions at p.11 of the case papers. Condition 16 provides that no construction will be allowed to be made on the plot within 20 margin of the road. In 1942, it appears, Rasul Musa Kagda applied for permission to erect a building on the plot he had bought and the Collr. of Broach granted the same by his order No. CTSR/32 dated 9-2-42. The order (p. 73 of case papers) runs thus . As regards the bidder Rasul Musa Kagda, it is ordered that construction over plots B & C at p. 41 (this is really p. 41-B) should be allowed to be made while plot A should be kept fully open without a roof. After Collr's order, it appears, Rasul Musa Kagda constructed a shed with a roof over it on plot A. This being in contravention of Collr's orders, the Collr. directed that it should be treated as an encroachment and be removed. Against this order of the Collr. Rasul Musa has presented an appeal to the Commr. contending that the construction cannot be ordered to be removed as it has been erected on the land purchased by him in public auction.

3. The Commr's own view of the matter appears to be as follows. He says " The order of the Collor. treating the constructions as encroachments and directing their removal is not justified as they within the plot sold to him. The constructions are however objectionable and are a clear breach of condition No. 16 of the memo. of conditions of the action which directed that no construction will be allowed to be made within the 20 margin of the road. Unfortunately an agreement in the prescribed form has not been taken so far which would have enabled the Collr. to forfeit the plot to Govt. but the condition stipulated at the time of auction is a condition annexed to the tenure under section 62 Land Revenue Code and the occupant can be evicted under s. 79A if he contravenes it." In the light of these remarks the Commr. has requested Govt. to pass orders for eviction of the occupant.

4. The Under Secy. H.D. considers that Collr's order No. CTSR/32 dated 9-2-42 allowing construction is faulty as it takes no notice of orders regarding margins from the road boundary. He observes further

that in the absence of Kabulaat the terms of Collr's. order are to be relied upon and that as Collr's order does not provide for any penalty for breach of condition, he considers that eviction cannot be ordered. In his opinion action can only be taken for removal of the unauthorised structures. R.L.A. is requested to advise.

~~Any The~~

[In R.L.A's opinion No. 6355 dated 30 th November 1937 the sixth point for R.L.A's consideration was whether in the case of lands appropriated to a non-agricultural purpose without ~~express~~ execution of any agreement or sanad, any action can be taken (a) for removal of any unauthorised structure (b) for levy of fine or (c) the levy of assessment at the current rate. R.L.A. held that if the order granting the permission what penalties can be lawfully imposed.

5. In this case, the permission of the Collr. was obtained by the occupant but as pointed out by the U.S. R.D. Collr. granted the permission overlooking the provisions regarding margin contained in condition }

V.M.D. /17-3-

4c.

Office of the R.L.A.

The view taken by Under Secy., Revenue Department,
is correct.

In the circumstance the proper course to follow
in the present case would be to order the removal of
the unauthorised structure.

Sd/- D.V.Vyas.

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Remembrancer of Legal Affairs.

U.R? to J.D., No. 2813 , dated 22nd March 1947.

Office of the R.L.A.

The grant of land to Mr. Vakharia under rule 43-B of the Land Revenue Rules, 1921 is not evidenced by any writing. Consequently there appears no objection to the Commissioner cancelling that grant in exercise of powers vested under section 211 of the Bombay Land Revenue Code, 1879, if he is satisfied that the grant is irregular. A sanad in Form F under section 133 of the Land Revenue Code will have to be issued in the name of the Governor of Bombay. It is a document affecting rights only between the Crown and the person to whom it is given. The sanad in the present case being void for want of compliance with the provisions of section 175(3) of the Government of India Act, 1935, it is not necessary to cancel it. The Commissioner can ignore the sanad and cancel the order of the Collector granting the land to Mr. Vakharia under rule 43-B.

Sd/- P. M. Lad.

10-5-47.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4799 dated the 12th May 1947.

V.H.D./17-5

4c.

Office of the R.L.A.

Under section 175(3) of the Government of India Act, 1935 all contracts made in exercise of the executive authority of a Province shall be expressed to be made by the Governor of the Province and all such contracts and assurances of property made in exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. The lease in the present case in Form H under rule 52 (1) of the Land Revenue Rules is executed on 15th May 1945 by the Collector on behalf of the Rt. Honourable the Secretary of State in Council by order of His Excellency the Governor of Bombay in Council. The lease not being in conformity with the provisions of section 175 (3) of the Government of India, Act, 1935 is clearly invalid and inoperative and can be ignored. The grant of land being irregular, the Commissioner was competent to set aside the order of the Collector under section 211 of the Land Revenue Code.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

V.O.R. to R.D.No. 2022 , dated the 28th February 1947.

Office of the R.L.A.

Rule 42 of the Land Revenue Rules, 1921

provides:-

"Unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by auction to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of such land by private arrangement either upon payment of a price fixed by him, or without charge, as he deems fit. "

Rule 42(2) requires the grantee of such land to pass an agreement in form F or form H as the Collector may deem fit. Under the standing orders Government waste lands either for agricultural or non-agricultural use should be disposed of by auction and if disposed of without auction, reasons should be recorded. It appears that Mr. Kurbanlucan Budruddin Safri, Superintendent, San General Department applied on 4-5-1944 to the Assistant Collector, Broach and Panch Mahale, Godhra; and on 8-5-1944 his request was granted subject to the payment of Rs. 193 as occupancy price, Rs. 42 as the value of trees and Rs. 40 as annual non-agricultural assessment revisable at the end of 30 years. He has passed an agreement in form H. A. Government considers that the grant of land is irregular firstly, because it was not sold by auction and secondly, because as required by the standing orders no

reasons were specified as to why the land was not sold by auction; and proposes to cancel the grant.

The Remembrancer of Legal Affairs is requested to advise whether there is any objection to cancelling the grant particularly when there is an agreement in form M.

In Secretary of State V. Anant Hulkar

(36) B.L.R. 242) the Privy Council held: (1) that under the Bombay Land Revenue Code, 1879 and rule 19 framed thereunder it was a condition precedent to the legality of a grant by the Collector that the previous sanction of the Commissioner should have been obtained, and as such sanction was not obtained, in the present case, the grant made by the Collector was invalid and conferred no title upon the grantees;

(2) that, assuming that the Collector's order granting the lands was valid, it was completely modified by the Commissioner under the powers conferred on him by section 211 of the Code and as the grantee failed to implement the Commissioner's order, he acquired no title to the lands.

In the present case the grant of land was made by the Assistant Collector in hot haste. It was not sold to the grantee by public auction. Nor did the Assistant Collector specify any reasons as to why the land was granted otherwise than by public auction. Evidently the grant was made in contravention of rule 42 of the Land Revenue Rules

and the standing orders of Government. Consequently the grant is invalid. There being no agreement in form For form M it would be competent for Government to cancel the grant under section 211 of the Land Revenue Code on the strength of the Privy Council decision in Secretary of State v. Mulkar. It is true that the agreement in form M executed both by the Assistant Collector and Mr. Safri cannot be cancelled by Government, but that agreement provides for permission to put the land to nonagricultural use and the cancellation of the grant of a land would implicitly involve the rescission of the agreement in form M, for, in the absence of occupancy rights Mr. Safri can claim no non-agricultural use of the land. It is possible that Mr. Safri may contend that Government would be bound by the admission in the agreement in form M that he is the occupant of the land. In other words he may plead estoppel. It is true that "like all other individuals the Crown may be brought within the grip of estoppel. There may be estoppels against the Government" (see Toolseemoney v. Maria Cornelius, 11 B.L.R. 144), but "there can be no estoppel from ignorance of law which both parties must be presumed to know (see Gurulinga-swami v. Kavalasubbanna 18 M. 58) and estoppel does not arise when both parties have equal means or knowledge both of facts and of law. Section 115 of the Indian Evidence Act does not apply to a person who knows real facts and is not misled by the untrue statement" (see Sarkar's Evidence Act,

page 969) Under section 175(3) of the Government of India Act, 1935 all contracts and assurances of property shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorise. No grant of Government land, unless it is so made, would be valid. In the present case there is no agreement evidencing the grant of land to Mr. Safri. Both the Assistant Collector and Safri, Superintendent in the General Department could be presumed to be aware of the legal position that no occupancy rights could, in the absence of any valid agreement, be conveyed or claimed. Consequently it appears that Government would not be bound by the admission of any of occupancy rights in the agreement in form M:

S/- D.V. Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D. No 16 , dated the 2nd January 1947.

Office of the R.L.A.

It appears that on 19th March 1946 Mr. Ghanekar the architect on behalf of his client Mr. Jannadas Gopalji of Ghatkopar submitted plans for construction of buildings on S.No. 166 part, 171 part and 37 part, Ghatkopar. On 18th April the District Deputy Collector sanctioned the plans after consulting the surveyor and issued orders regarding the levy of non-agricultural assessment. In the meantime the Executive Engineer in his letter No. 1466, dated 16-4-1946 informed the Collector that his sub-divisional officer had noticed that the construction of a building and compound wall had been started in S. Nos. 35, 36, 37 and 172 of Ghatkopar and that the construction was within the margin of the proposed diversion of the Bombay Agra Road at Ghatkopar and requested that the construction should be stopped. The surveyor who was asked by the Collector to inspect reported that the compound wall on the North and East had been constructed, one building had come up to the ground floor and the other upto the plinth level and that the land was earmarked for the proposed diversion of the road. The Executive Engineer reported that his sub-divisional officer had noticed the construction of plinth masonry of a building and compound wall. Mr. Ghanekar was asked to immediately stop the work.

The surveyor who scrutinised the building plans lost sight of the fact that the Executive Engineer had sent a plan of the proposed diversion at the Agra Road. The building plans, being in order in respect of all other matters, were sanctioned by the Deputy Collector. The work was started by the occupants before permission was granted under section 65 L.R.C. For this reason and also for the reason that the land is required for the diversion of the Agra Road the Collector requested the

Commissioner to cancel the permission granted by the Deputy Collector. The Commissioner considers that the building work is unauthorised and action under section 66 L.R.C. can be taken against Mr. Gopalji.

The Secretary, R.D. in his note at p. 54 observes:-

"The application for sanction of the building plans and the sanction given by the Deputy Collector must be considered to have been given under section 67 of the Land Revenue Code and to constitute permission for the non-agricultural use of the land subject to compliance with the plans. Now that the building has been constructed, it is doubtful whether this permission can be cancelled. "

The R.L.A. is requested to advise on this matter.

It is true that the powers of Government under section 211 of the Land Revenue Code are very wide and it would be competent for Government to revise the orders of any subordinate revenue officer at any time particularly when there is no sanad or agreement in pursuance of such orders. But it appears doubtful whether those powers under section 211 can be availed of for the purpose of cancelling the permission under section 65 after it is acted upon.

Under section 65 of the Land Revenue Code the Collector on receipt of an application for permission to use the land for a non-agricultural purpose (a) shall send to the applicant a written acknowledgment of its receipt, and (b) may after due inquiry either grant or refuse the permission applied for but where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission shall be deemed to have been granted. Where the Collector received an application and in order to

gain time issued a reply that "permission is refused; it may be granted after the inquiry which will now be made" the High Court held that the applicant was justified in proceeding with his building (see *Shivapaising v. S. of State*, 26 B.L.R. 374). It follows therefore that in cases where the Collector fails to pass orders within three months there is no legal objection to proceeding with the construction of a building and however objectionable none can stop such construction. But if it is to be held that permission granted under section 65 can be countermanded by virtue of powers under section 211 the position of a person who has obtained permission under section 65 would be worse than that of a person to whom permission is deemed to be given merely because the Collector did not decide his application within a period of three months; and this could not have been the intention of the Legislature.

Where the Collector after fixing the rate of building assessment, granted the applicant a sanad enabling him to convert certain agricultural land into building sites and for those reasons a high price was paid by other persons for the land, it was held that since an equitable right had grown up after the permission was granted, the permission granted by the Collector could not be cancelled (cf. *Dadoba v. The Collector of Bombay*, 25 Bom. 74 and *The Municipal Corporation Bombay v. S. of S.* 29 Bom. 580). The same principle will apply in the present case where the building is sanctioned by the Deputy Collector in the present case. In pursuance of the permission granted by the Deputy Collector the building is constructed whereby an equitable right has grown up.

Consequently even if it be held that permission granted
'by the Deputy Collector under section 65 can be revoked under ~~section~~
section 211, Government would be liable to pay the occupant
compensation. The view taken by the Secretary, R.D. appears
to be correct.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

U.R.to R.D., No. 3042 , dated the 28th March 1947.

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Sd/-
31-5

V.M.D./18-5
4c.

Office of the R.L.A.

It appears that one Mr. D.G. Kulkarni is a watandar Kulkarni of some villages in Muddebihal Taluka. As he was found to be careless and negligent in the discharge of his duties the Mamlatdar, Muddebihal issued an order on 30-5-1946 suspending him in anticipation of sanction of the Prant Officer and requiring him to hand over charge to one Gurumath Malhar Kulkarni. After acknowledging the receipt of the Mamlatdar's order Mr. D.G. Kulkarni did not comply on 5-6-1946 appealed to the Prant Officer challenging the Mamlatdar's order dated 30-5-1946 as ultra vires. Finding that Mr. D.G. Kulkarni did not comply with his order, the Mamlatdar issued on 10-6-1946 a notice and an order to apprehend him under section 25 of the Land Revenue Code, 1879, Mr. D.G. Kulkarni wrote below the notice that he was not prepared to hand over the papers until the Prant Officer to whom he had appealed on 5-6-1946 decided his request for a stay order. Then the warrant of arrest issued by the Mamlatdar was executed and Mr. D.G. Kulkarni was produced before the Magistrate II Class and was thereafter released. It appears that on the report of the Mamlatdar dated 30-5-1946 the Prant Officer issued an order on 1-6-1946 confirming the Mamlatdar's order suspending Mr. D.G. Kulkarni; but the Prant Officer's order was actually issued by his office on 10-6-1946. The Secretary, Revenue Department in his note at page 78 ante observes:

"The Mamlatdar had no authority to suspend the Kulkarni. Although his order was confirmed by the Prant Officer on 1-6-1946 there is nothing to show that it was communicated to the Kulkarni at that time. In fact it appears that the order was not actually issued till 10-6-1946.

If the Kulkarni was not informed that the Prant Officer had suspended him he could not be expected to hand over his Daftar to another Kulkarni. Powers under section 25 L and

Revenue Code can be exercised by the **Mahar Mamlatdars** under Government Resolution No. 5295, dated 1-6-1911. It was however certainly improper to issue a warrant of arrest without having made clear to him that there was proper authority for requiring him to hand over his Daftar. The notice under section 25 issued to the Kulkarni only refers to his having been suspended on 30-5-1946 i.e. by the Mamlatdar and makes no reference to the fact that the Prant Officer had passed an order on the subject. In the circumstances, it seems doubtful whether the warrant of arrest was legally issued."

The R.L.A. is requested to advise on the following question:-

- (1) Whether the warrant of arrest was legally issued by the Mamlatdar.
- (2) Whether the actions of the Mamlatdar were in order; and
- (3) Whether Government's sanction under section 197(1) Criminal Procedure Code is necessary to prosecute the Mamlatdar.

Powers under section 25 of the Land Revenue Code, 1879 have been conferred on Mamlatdars and Mahalkaris (see. G.R., R.D.No. 5295, dated 1-6-1911). Consequently the Mamlatdar, **Muddebihal** had powers to issue a notice and a warrant of arrest under section 25. But what is necessary for the exercise of powers under section 25 is that the officer, issuing a notice and a warrant of arrest must have a claim on the revenue officer or any person formerly employed as such in his department or district as for public money or papers or other property of the Crown. In the present case the Mamlatdar could have no such claim for papers of the Crown on Mr. D.G. Kulkarni unless and until he was either suspended or removed from his office by a lawful authority. Since the Mamlatdar had no authority to suspend a village officer under section 57 of the Bombay Hereditary Offices Act, 1874, his order suspending Mr. D.G. Kulkarni in anticipation of sanction of the Prant Officer was clearly illegal and ultra vires. Any such order of suspension could be enforced only when the sanction of the Prant Officer is obtained. Consequently the notice and warrant

of arrest issued by the Mamlatdar on 10-6-1946 in pursuance his order of suspension were illegal. It is true that the Prant Officer passed an order on 1-6-1946 confirming the Mamlatdar order suspending Mr. B.M. Kulkarni. Such orders appear to be highly irregular, for the power to suspend a village officer vests in the Prant Officer under section 57 of the Bombay Hereditary Offices Act read with section 10 of the Land Revenue Code and consequently it was for the Prant Officer to pass an order of suspension and not merely to approve the order of suspension passed by the Mamlatdar without any power to do that. That apart, the Prant Officer's order was not issued earlier 10-6-1946 and in fact the notice and warrant issued by the Mamlatdar under section 26 Land Revenue Code clearly indicate he acted not on the strength of the Prant Officer's order but the strength of his own order issued on 30-5-1946. In the circumstances it appears that the Prant Officer's order dated 1-6-1946 confirming the Mamlatdar's order of suspension could afford no justification for the notice and warrant issued on 10-6-1946 by the Mamlatdar under section 26 of the Land Revenue Code. The view taken by Secretary, Revenue Department is correct.

Where a person went to a police station to lodge a complaint and the police officer in consequence of something restrained a person until he consulted his superior and then discharged him his conscience, he was held to have committed no offence. The Court said:-

"Although the petitioner may have exceeded the limits of his authority and may have done an act which he was not justified in doing, and so rendered himself liable to a civil suit for damages, the facts found do not, in our judgment, amount to the criminal offence of wrongful restraint" (Madrool Hossein 24 W.R. (r.) 51; Ratanlal's Law of Crimes p. 846).

In the present case the Mamlatdar was empowered to take action under section 25 L and Revenue Code and appears to have used those powers on the wrong impression that he could proceed against Mr. D.G. Kulkarni without waiting for the receipt of the orders of the Prant Officer confirming his order of suspension. Consequently the Mamlatdar is likely to get the protection of section 79 Indian Penal Code.

No sanction of Government under section 197(1) Criminal Procedure Code appears necessary to prosecute the Mamlatdar (see R.L.A's opinion No. 160-B P, dated 8-7-1946⁶).

Sd/- D. V. Vyas .
Membrancer of Legal Affairs.

U.B.R. to R.D.No. 2459, dated the 12th March 1947.

Submitted after issue with an index card.

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Sd/- 30-6

V.M.D./18-6

47.

Office of the R.L.A.

The Collector's notification of 1820 seems to make a clear distinction between the terms on which the waste land of one bigha was given to Vallabh, the original grantee, and the terms on which it could be continued to the grantee's heirs. The first condition prohibits the grantee, and ~~and~~ ~~therefore~~ from selling the house and the land and excludes both of them from liability for his debts. Under the second condition the grantee could live in the house and enjoy the profits of the land only as long as and until he cultivated, on terms ~~previously~~ previously agreed upon, Government lands paying annual assessment of not less than Rs. 100. It follows that the waste land of one bigha was liable to be resumed if (1) the grantee sold that land and the house or (2) he ceased to cultivate ~~at~~ other Government lands assessed at Rs. 100 on terms previously agreed upon. The third condition provides for the continuance of the house and the land (one bigha for each house) to the grantee's heirs provided (1) they continue to cultivate Government lands on terms previously agreed upon by their ancestors and (2) continue to live in the village. If either of these two conditions is not observed the land is liable to be resumed. The restraint against alienation is, therefore, limited in its operation, to the grantee alone ~~but~~ but not to his heirs. If that were not so, the first and the second conditions would have been worded differently. The words "on terms agreed upon by their ancestors" are referable ^{to} not to the terms on which the waste land was given to the

original grantee but to the terms under which the grantee was obliged to cultivate other Government lands paying annual assessment of Rs. 100. Consequently unless the heirs have (a) ceased to cultivate Government lands assessed at Rs. 100 on terms previously agreed upon or (b) ceased to live in the village, no portion of the bigha of land or the house built thereupon can be resumed.

2. The view taken by the District Government Pleader in his endorsement No. 178 of 2-9-1946 does not appear to be correct. In civil suit No. 58 of 1944 which is based upon the same cause of action as in civil suit No. 115 of 1941, the waste land was resumed on the ground that the grantee's heir was not cultivating any other land paying assessment to Government and owned no house in the village, and consequently there was a clear breach of the third condition of the notification. The suit of 1941 was allowed to be withdrawn with permission to file another suit on the same cause of action and the suit of 1944 was filed by reason of that permission.

Sd/- P.M.Lad

15-5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5003, dated the 16th May 1947.

~~Submitted~~ after issue with an

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V.M.D./18-5

4c.

Office of the R.L.A.

The lease of the land to Mr. Karai for a period of five years appears to be quite in conformity with rule 43-A of the Bombay Land Revenue Rules, 1921 and is evidenced by an agreement in writing in Form G- O C-I. The fact that the grant of the land was previously refused to Mr. Karai himself and to some others also or that it was not auctioned would not make the present lease irregular, much less illegal. There is however one circumstance which may enable Government to avoid the lease. The lease has been executed by the District Deputy Collector for the Collector. Under item 25 of Government Resolution (Home Department) No. 5940/30 - II, dated 1st April 1937 deeds and contracts and instruments relating to land or building outside the City of Bombay are to be executed by the Collectors of Districts. This power vested in the Collectors under section 175(3) of the Government of India Act, 1935 cannot be exercised by the District Deputy Collectors by resorting to section 10 of the Bombay Land Revenue Code. The execution of the lease in the present case by the District Deputy Collector on behalf of the Collector does not create a valid lease. However in view of the fact that the lease is ^{only} two years more to run it does not appear desirable that Government should cancel the grant and invite litigation.

L
Sd/- P.M.D.

-26- 4

28th April 1947.
Legal Affairs.
U. R. to R.D., No. 4262, dated the 28th April 1947.

Office of the H.L.A.

In view of the fact that the inclusion of any land in a Town Planning Scheme does not by itself override the provisions of section 65 of the Land Revenue Code, 1879 under which the permission of the Collector is necessary for agricultural land to be put to non-agricultural use, Government by ^{its} their Order, Revenue Department, No. 2037 dated 20-10-1920, has authorised Collectors of districts to notify in the case of each town planning scheme that permission is granted to build on all final plots of land embraced by that scheme, on condition of payment of the standard assessments fixed under section 48 of the Land Revenue Code and that such permission is not required in individual cases. By Circular Memo. (Revenue Department No. 256/39, dated 12-4-1939, Government instructed the Collectors not to give permission under section 65, Land Revenue Code for construction of temples, churches and mosques without the previous approval of Government. These instructions being of a general nature, temples, churches and mosques were deemed excluded from the orders of Government contained in Govt. Order No. 2037, dated 20-10-1920. These instructions being of a g and orders being relatable to section 8, the Collector, Sholapur while issuing his order No.L.H.D. 465, dated 8-5-1944 giving general permission to build on plots included in the Town Planning Scheme should have clearly stated that such general permission did not include temples, churches and mosques. His failure to do so implied general permission to build ^{even} ~~upon~~ temples, churches, and mosques on final plots included in the Town Planning Scheme and thereby he contravened the instructions of Government to modify in Government Circular Memo. (R.D.) No. 256/39, dated 12-4-39.

Consequently it would be competent for Government to modify the Collectors order No. L.N.D. 465 dated 8-5-1944 (in so far as it applies to this mosque) in exercise of power^a vested under section 211, Land Revenue Code. But it appears that it would be inequitable now to enforce the Government's order retrospectively in the present case, for relying on the general permission of the Collector dated 8-5-1944 the Muslims have spent Rs. 1075/- over the construction of the mosque. If, however, Government considers that in the interest of public peace this mosque- should not be allowed to be completed, Government may modify the Collector's general permission dated 8-5-1944 as being in contravention of Government's Circular No. 256/39, dated 12-4-1939; but Government would be liable to pay compensation to the Muslims for the amount spent on construction.

84/- P. M. Led.

19-5

Remembrancer of Legal Affairs.

U.R. to S.D., No. 5023 dated the 19th May 1947.

V.M.D./18-5

4c.

Office of the S.L.A.

Following the decisions in the Government of Province of Bombay vs. Morrmaji Manakji (Letters Patent Appeal No.40 of 1936) and Government of Bombay vs. Nathardas (44 B.L.R. 496) the High Court of Bombay in the Government of the Province of Bombay vs the Ahmedabad Sarangpur Mills Co., Ltd. (46 B.L.R. 413) has held:

"Under section 211 of the Land Revenue Code, 1879 the Commissioner can in revision call for the papers in order to satisfy himself as to the legality or propriety of any decision or order passed by and as to the regularity of the proceedings of, a subordinate revenue officer. The Commissioner cannot under the section cancel an agreement made by the Collector, not as a subordinate of the Commissioner, but as agent for the Secretary of State and entered into by the Collector in that capacity with third parties."

In the present case three plots of land were granted to Mr. Amangal Khan on different dates and at different rates. These grants have not been evidenced by any agreement in writing between the Collector on behalf of the Governor and the grantee. In the absence of any agreement as provided in section 175(3) of the Government of India Act, 1935, the grants would be deemed to have been made by the Collector as a subordinate of the Commissioner. Consequently it would be competent for the Commissioner to cancel these grants under section 211 of the Land Revenue Code, 1879, if he is satisfied that they are irregular.

It is true that the grantee has passed agreements in Form HH under rule 43 of the Land Revenue Rules, 1921 and the Mamlatdar has granted him permission in Form KK under rule 54. The agreements in Form HH are addressed to the Mamlatdar stipulating to hold the land on occupancy terms and the permission to hold Form KK is signed by the Mamlatdar granting permission to hold the land on terms agreed to by the grantee. Agreements in Form HH are unilateral and do not bind Government. The permission

in Form KK is not issued as agent for the Governor of Bombay
There appears therefore no objection to the Commissioner
cancelling the permissions granted in Form KK. On cancelling the
grants of land and the permissions issued in Form KK the grantee
would not be entitled to claim the occupancy of land. It would
not therefore be necessary to cancel the agreements in
Form HH. (See R.L.A's opinions Nos. 8526 dated 14-11-1943
and No. 16 dated 2-1-1947).

On eviction it appears Mr. Khan would be entitled to
compensation from Government (see R.L.A's opinion
No. 291-P, dated 4-7- 1947 1935).

Sd/- P.M. Mad.
10-5
Memoranducer of Legal Affairs.

U.R. to R.D., No. 4801 dated the 12th May 1947.

V.M.D./13-5

13-5 40.

Office of the R.L.A.

From the Commissioner's report it appears that the water rate has been levied under section 101 of the Land Revenue Code (since repealed.) Under that section the power to assess lands included power to assess, whether directly or indirectly, on the land or in the form of a rate or cess upon the means of ~~land~~ irrigation in respect of which no rate is levied under section 86 or under the Bombay Irrigation Act, 1879, or in any other manner whatsoever that may be sanctioned by the Provincial Government. This assessment under section 101 was fixed at the time of survey and formed an integral part of the land revenue and enjoyed the guarantee of non-enhancement for a fixed period at the time of settlement, original or revision. Of course, along with this liability to pay, the ryot enjoyed the right to have the water. (Gupta's Land Revenue Code, p.551). The assessment for water would now be governed by section 117 (C) of the Land Revenue Code. Whenever an assessment includes ~~Satasthal~~ or ~~Almayat~~, the soil and water portions are to be separately shown in the village accounts, apparently merely for the purpose of accounting and for relieving the occupant of the water assessment if at any time he does not enjoy the benefit of the water facilities; but, for that reason, the water rate does not cease to be part of the land revenue assessment. There is no authority in law for the municipality to claim a portion of what is, in reality land revenue assessment levied by Government from occu

occupants under the Land Revenue Code and the
view taken by the commissioner is, therefore,
correct.

SA/- P. M. Lal.
29-5

Representative of the Legal Affairs

U.R. to H. & L.G.D., No. 5702, dated the 30th May 1947.

V.M.D./18-5-
2c.

Office of the R.L.A.

The view taken by the U.M., H.D. is correct.

The instructions issued to the Collectors in Government Circular Memorandum No. 6665- B/ 33 of 18th May 1939 are intended to cover only those cases in which a person claims ownership over land which has been declared as vesting in Government in encroachment proceedings under section 37(2) of the Land Revenue Code. They were issued because it was considered reasonable and desirable that the party concerned should be given sufficient time to establish his claim by bringing an action in a Civil Court. These instructions cannot prevent Government from directing, in a fit case, the eviction of an encroacher or an occupant under section 61 read with section 202 of the Land Revenue Code. The present case does not arise out of ~~encroachment~~ encroachment proceeding and is therefore outside the scope of the circular memo of 1939. It is open to Government, if they so choose, to direct the Collector to proceed with the eviction unless in the meantime, the plaintiff obtains an order of injunction from a competent court.

Sd/- D. V. Vyas.
 Retenbranceur of Legal Affairs.

G.R. to H.D., No. 7015 , dated the 9th July 1947.

L. D. R. I. No. 4523.
dated 14-4-1947.

Submitted.

2. Please see Collr. of Kaira's report regarding Rent suit No. 176 of 1933 at pp. 28-29 ante, on Mr. Pramlal Anopram Thakor's petitions to Govt. at pp. 1-2, 17 ante. In para 2 of U.S. R.D's note he states "the rent notes of the second suit were lost in the revenue office and no recovery could therefore be made; though it is alleged that the person concerned paid to the applicant out of court. Has applicant however any claim against Govt.?"

(p. 35 ante) Instead of noting on the question and discussing the matter in detail, the R.D. has suggested a reference to the R.L.A. to advise whether the applicant can have any claim against Govt. in the circumstances of the case (p.37 ante.)

SM/-

20-5

V.M.D. / 18- 5

Office of the R.L.A.

In the circumstances stated by the Revenue Department it does not appear that the applicant can have any valid claim against Government.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 7008 dated the 9th July 1947.

V.M.D./19-5

4c.

Office of the R.L.A.

It appears that the village Jirigwad is an alienated village in Mar Dharwar District. The village was surveyed in 1851 and the original settlement was introduced before the passing of Act I of 1865. After the expiry of the term of settlement no revision settlement was introduced in the village and the Inamdars have reverted to the Mamul rates. The Collector of Dharwar opines that the original settlement having become ineoperative by efflux of time the village is as good as unsettled. R.D. relies on section 216(4) of the Bombay Land Revenue Code, 1879 and disagrees with the view taken by the Collector. The R.L.A. is requested to advise whether the view taken by R.D. is correct.

The view taken by R.D. is correct. Section 216(4) provides that all survey settlements hereto fore introduced in alienated villages shall be valid in accordance with the ~~express provisions~~ provisions of this section. Consequently the survey settlement introduced in the village of Jirigwad before the passing of Act I of 1865 would be deemed to be validly introduced under the Bombay Land Revenue Code. Section 217 further provides that when a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as holders of land in unalienated villages have, or are affected by, under the provisions of this Act, and

all the provisions of this Act relating to holders of Land in unalienated villages shall be applicable, so far as may be, to them. In *Dhondo v. Secretary of State*, 22 Bombay Law Reporter, p. 247 at p. 251 Shah J said "Taking, however, the words of the section in their plain and natural sense, I am satisfied that section 217 applies not only when a settlement is introduced into an alienated village after the Land Revenue Code of 1879 came into force either under section 216 but also when a Survey Settlement is introduced prior to it under the provisions of any law for the time being in force."

In *Ahmedabad Ginning and Manufacturing Co. Ltd. vs. Secretary of State* it was held:

"The assessments fixed at a survey settlement do not cease to be operative at the expiry of the period of guarantee unless and until they were revised."

Consequently though the period of settlement expired long ago, the settlement would continue to be in force until a revision settlement is introduced.

Sd/- P. M. Lad.
11-6

Remembrancer of Legal Affairs.

U.R. to M.R.B., No. 6130 , dated the 13th June 1947.

V.M.D./19-5
4c.

It is true that under sub-section (5) of section 37-A of the Land Revenue Code, 1879, Government is constituted the sole judge to decide whether or not the public road, lane or path or part thereof specified in the notification under sub-section(1) is required for the public use; but such decision is required to be made after considering the record of the proceedings and the report, if any, made under sub-section(4). In the present case, it appears, that the public objected to deroding and their objection was not without substance. On taking a detached view it appears that the deroding was improper, if not illegal, and opposed to the spirit of section 37-A. Now that a declaration about deroding has been made, the land vests in Government free from all rights of the public and it would not be legally feasible for Government to restore the land to its former position by cancelling the declaration made under sub-section(5). It would have been possible for Government to regrant it to the public for road purposes but for its commitment made to Rao Sahab Bhailalbhai in Civil Appeal No. 20 of 1940. Government has put itself in an awkward position, for Government cannot in view of so much public opposition to deroding morally justify the action nor can it stay its hands now and refuse to fulfil the undertaking given to Rao Sahab Bhailalbhai. In the circumstances the proper course to follow could be to await the decision of the suit No. 364 of 1945 challenging the deroding. If the suit succeeds Government would be saved from the awkward position and Rao Sahab Bhailalbhai can have no claim against Government and the land would remain part of the road. If however the suit fails, Government may take steps to acquire the land for the Panchayat for road widening if Government is

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satisfied that in view of the changed circumstances the land is needed for such purpose.

Sd/- D. V. Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6678 , dated the 28th June 1947.

V.M.D. /19-5

4c.

Office of the R.L.A.

The contentions raised by Mr. A.A.Khan, M.L.A., are:-

(1) The order passed by Government cancelling the grant of land to Mr. K.B. Safri without giving him an opportunity to present his case is opposed to the spirit of section 211 L.R.C.

(2) The executive orders of Government providing that Government land should be sold by public auction or if disposed of otherwise than by public auction the reasons should be recorded, though issued under section 8 L.R.C. can have no application when sections 37 and 62 read with rules 42 and 43 of the Land Revenue Rules clearly conferred on the Collector the power to dispose of land even otherwise than by public auction.

(3) The non execution of any document in Form H or F does not vitiate the sale.

(4) The provisions of section 175(3) of the Government of India Act, 1935 are not attracted in the present case when the transaction is effected by the grant of the sanad.

(5) The sanad is binding on Government on the ground of estoppel.

The Remembrancer of Legal Affairs is requested to advise whether there is any substance in any of the contentions raised by Mr. Khan.

Almost all the points raised by Mr. Khan were fully considered by the R.L.A. in his last opinion No.16, dated 2-1-1947. Section 211 of the Land Revenue Code, 1879, does not provide for the hearing of any party. Government is vested with power to call for and examine the records of proceedings of subordinate officers and to pass such order thereon as it deems fit. Consequently the order passed by Government cancelling the grant in the present case without hearing Mr. Safri cannot be considered illegal or opposed to the spirit of section 211 L.R.C. It is undisputed that Government has powers under section 8 to issue executive orders in all matters not specially provided for by law.

P.T.O.

CHM:R

Under section 62 the Collector has power to dispose of 56.
unoccupied land either on payment of occupancy price or by
public auction. Rule 42 which provides for the disposal of
land for building and other purposes also gives discretion
to the Collector to dispose of the land by public auction or by
private arrangement. But neither section 62 nor rule 42 lays
down the manner of using the discretionary powers of the
Collector. Consequently the standing orders of Government
requiring the Collector to record his reasons in cases
where the land is sold otherwise than by public auction
would be perfectly intra vires section 8 in that
they would be regulating matters not specially provided for by
law. Consequently the non-compliance of those orders rendered
the grant irregular. Further, it is not illegality alone
which justifies Government's interference under section 211.
The impropriety of an order is a good and valid ground for
Government to exercise its powers under section 211 L.R.C.
The fact that the order granting the land was passed in hot
haste and without considering whether the disposal of land
by public auction would yield better price would be enough
to hold that the Assistant Collector's order was improper.
No agreement in Form F or Form H as provided in rule 43(2)
was executed. Nor any document was passed between Government
and Mr. Safri evidencing the grant as provided in section 175(3)
of the Government of India Act, 1935, the provisions of which
are imperative. Consequently there was no binding agreement
between Government and Mr. Safri. The agreement in Form K is
no doubt a deed granting Mr. Safri permission to convert the
land to non-agricultural use; but that agreement did not and

could not transfer the occupancy rights to Mr. Safri. The question of estoppel and the effect of Sanad in Form M were considered by the R.L.A. in his last opinion. It is therefore clear that there is no substance in any of the contentions of Mr. Khan.

31/- D. V. Vyas

Remembrances of Legal Affairs.

U.R. to R.D. , No 283 Conf1, dated the 27th June 1947.

F.M.D./19-5
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Submitted.

2. The Collector of Kolaba has sent the following telegram to Govt. in the R.D.

" Large number of appeals expected under section 24(3) x x x Agricultural season on x x Please state if Collectors powers hearing appeals delegated to prants."

The R.D. proposes to reply to this telegram as follows :-

" In view of the provisions of section 10 of the Bombay Land Revenue Code, 1879, and Assistant or Deputy Collector can entertain appeals against the orders of a Kamlidar or a Mahalkari under the provisions of the B.T. Act providing for appeals to the Collector of a District, in respect of the talukas or mahals in their charge."

Before however this reply is sent, the R.D. has shown the same to the R.L.A.

Office of the R.L.A.

Seen and returned.

The view expressed in the draft letter at page 5
is correct. (Cf. 13 Bom. L.R. p 1031 and 39 Bom.
552).

Sd/- D. V. Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D. , No. 8072 , dated the 6th August 1947.

V.M.D./18-5

4c.

Office of the R.L.A.

Though the Mewassai Estates form part of British India, they are excluded from the operation of the Bombay Land Revenue Code, 1879(Cr. Sec. 1(2)). .
Consequently it appears no action can be taken under the I.R. Code for settling the boundary dispute.

9d/- D. V. Vyas.
Remembrancer of Legal Affairs.

U.N. to R.D. No. 5369 , dated 14th August 1947.

V.M.D. /19-5
4c.

Office of the R.L.A.

It appears that S. No. 265 of Chandravasan supa, taluka Jalapur (Surat) measures 6 acres and 20 gunthas and is assessed to agriculture and it is assigned as grazing area. A part of this S. No. measuring 922 square yards was put to unauthorised non-agricultural use for brick making. The Prant Officer, Jalapur Prant passed orders levying proportionate agricultural assessment plus Local Fund cess and a fine equal to double the proportionate agricultural assessment. The Commissioner has directed the Collector to revise the Prant Officer's order by--

- (1) assessing the entire S.No. excluding 922 square yards i.e. portion used for non-agricultural purposes,
- (2) levying non-agricultural assessment for 922 square yards used for brick making, and
- (3) imposing a fine not exceeding 20 times the non-agricultural assessment or Rs. 100 under rule 103.

The Collector has invited the attention of the Commissioner to the decision of the Bombay Revenue Tribunal in a similar case where the R.L.A. in his opinion No.196, dated 11th January 1944 opined that the assessment referred to in para. 2 and 3 of section 61 of the Land Revenue Code, 1879, refers to the assessment already fixed before the unauthorised non-agricultural use was made and that the person concerned could be called upon to pay only the agricultural assessment on the whole area of the S.No. in addition to fine as laid down in para. 4 of section 61. The Commissioner, N.D., however, does not appear to agree and considers that the levy of agricultural assessment on the entire area of the S.No. for the unauthorised non-agricultural use in a portion thereof and the penalty under rule 103 levied under para 2 of section 61 would be inconsistent in view of the fact that section 48 directs levy of assessment according to the

re of the land and the penalty under rule 103 cannot be
rvied without actually charging non-agricultural
assessment on the area so used. The R.L.A. is
requested to re-examine the legal position

The view taken by the Commissioner, M.D., is
not correct. Section 61 of the Land Revenue Code,
1879, prescribes the penalties for the unauthorized
occupation of land. Section 43 provides for the levy
of assessment according to the purpose for which it is
used. It is apparent that these sections provide for
different purposes and the levy of agricultural
assessment of the whole number from the person
unauthorisedly occupying a portion thereof under para.
2 of section 61, would in no way be inconsistent with
section 43. Nor would the levy of ~~agricultural~~ penalty under
para. 2 of section 61 be inconsistent with rule 103, for
.~~Examine~~ under that rule for purposes of assessing the fine
what is necessary is to determine the non-agricultural
assessment leviable on the land unauthorisedly used for
non-agriculture and not to charge such assessment as
presumed by the Commissioner, M.D. In the circumstances
the R.L.A. sees no reason to reconsider his previous
opinion No. 196, dated the 11th January 1944.

Sd/- D. V. Vyas.

Remembrancer of Legal Affairs.

U.R. to Revenue Department, No. 7732, dated the 26th July 1947.

V.A.D./19-5

4c.

Office of the R. L. A.

Seen and returned.

If the agreement in Form RH is inconsistent with the terms of the original grant, there is no objection to Government asking the occupant to execute a fresh agreement in that form so as to conform to the terms of the grant.

Sd/- D. V. Vyas,
Remembrancer of Legal Affairs.

U.R. to W.D., No. 5266, dated the 12th August 1947.

V.M.D./19-6
46.

Office of the R.L.A.

The action against the godown keeper's sureties has obviously been taken under section 27 of the Land Revenue Code. That section occurs in Chapter III of the Code which relates to the security to be furnished by revenue officers. The godown keeper was presumably appointed by the Civil Supplies Department and not under the provisions of the Bombay Land Revenue Code as required by section 3(1) of that Code. Even assuming that the godown keeper can be said to be employed in or about the business of the land revenue as the Collector seems to suggest by giving the term land revenue an artificial construction, he would not for that reason become a revenue officer unless he was also appointed under ~~section 22~~. The ~~sureties'~~ liability does not seem to be covered by the provisions of the Land Revenue Code. It is not, therefore, permissible to proceed against the sureties under section 27. The sureties' liability does not seem to be ~~also~~ covered by section 187 of the Land Revenue Code; and the surety bond does not contain a specific clause making the amount recoverable from the sureties as an arrear of land revenue. The proper course would be to file a civil suit against the principal and his sureties.

54/- P. M. Lad.

Branch of Legal Affairs.

U.S. to C.S.D., No. 8572, dated the 23rd August 1947.

Office of the R.L.A.

The first question is whether agreements in forms F (1) and I(1) taken from the person intending to become the "occupant" can be construed as a contract binding on Government.

Sub-rule (4) of rule 37 of the Bombay Land Revenue Rules (1921) provides that when the land is granted on impartible ~~tenure~~ ^a as agreement in Form F (1) and when it is granted on inalienable tenure, an agreement in Form I(1) shall ordinarily be taken from the person intending to become the occupant. From Forms F(1) and I(1), it will be noticed that they are in the nature of Kabuliyat passed by the person intending to become the occupant in favour of the Mamlatdar, and that being so it is not an agreement evidencing the grant of the land, nor a Sanad executed by the Collector ~~in favour~~ ^e of the occupant. That being so, there is no objection to the Collector cancelling the agreements in Forms F(1) (cf. R.L.A's No. 8586, dated 14.11.1943).

The second question is whether ^e Government would be liable to pay compensation to the grantee for the improvements made by him. On equitable grounds, the grantee would be entitled to claim compensation in respect of the improvements, if any, made on the land. (Of R.L.A's No. 201-F, dated 9-7-1935 followed in No. 4801, dated 12-6-1947.)

54/- P. M. Led.
22-3-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8569, dated the 23rd August 1947.

OFFICE OF THE R. L. A.

Under rule 91 of the Land Revenue Rules when any holding which has been assessed or of which the assessment has been altered for any non-agricultural use, is used for agriculture only the Collector may on the application of the holder remove the non-agricultural assessment and impose either the old agricultural assessment if any, and if the settlement has not expired or may impose in other cases a new agricultural assessment equivalent to that imposed on other similar agricultural lands in the vicinity. This provision does not require the holder to make the land fit for cultivation before he could request for the re imposition of agricultural assessment. All that is necessary is that he must cease to use the land for non-agriculture and use it for agriculture. In the present case the holder (i.e. the appellant) ceased using the land for non-agriculture and tried to use part thereof for agriculture and applied to the Mamlatdar for reimposing agricultural assessment. In the order granting him permission to use land for non-agricultural use no condition was imposed requiring him to restore the land to its former condition. No agreement containing such condition appears to have been executed as was done by his predecessor-in-title; and the condition imposed upon the predecessor-in-title has not been made binding upon the appellant. In the circumstance it appears that the view taken by the Commissioner is correct and Government can at the most claim non-agricultural assessment in respect of the area covered by the kila which cannot be deemed to have been used for agriculture but no fine

be levied. The R.L.A's opinion of 1937 relied on by
R.D. has no application to the present case.

Prof. P. H. Lad
12-9-47.

U.R. to R.D. No. 9208 , dated 15th September 1947.

V.M.D. /19-5
4c.

L. D.R.I. No. 6929/11-8-47.

Submitted.

2. The village Kudup in Chipium taluka was attached under section 189 of the Land Revenue Code, 1879, since 1930-34. The Khots of the village applied for restoration of the village on 20th September 1946, and showed willingness to defray all the arrears due by them. The Commissioner wants the Govt. to declare the village to have lapsed to Govt. Revenue Department does not consider any specific orders of Govt. necessary, and requests R.L.A. to advise in the matter.

SD/-
12-3

V.M.D. /19-5
40.

75
Office of the R.L.A.

Seen and returned.

By virtue of section 153, Land Revenue Code, 1879,
village has lapsed to Government and no specific
orders of Government appear necessary for the purpose.

Id/- P.M.Lad.

22-8

Remembrances of Legal Affairs:

U.R. to R.D., No. 8606 , dated the 23th August 1947.

V.M.D. /19-8

42.

Office of the R.L.A.I. Statement of facts.

The material facts gathered from this protracted dispute are as follows. Survey No. 302 of village Bhadeli Jagpalain originally belonged to the Kolis. It measured about 68 acres. An area of 23 acres out of this land was purchased by the applicant's father Haribhai Gopalji Desai about 50 years ago. Thereafter, the remaining area of 45 ^{A O} ₀ was constituted into a separate sub-division survey No. 302 1/1, while the area purchased by the applicant's father was assigned a separate sub-division survey No. 302/2. Mr. Ansell apparently owned land near survey No. 302 1/1. She was admittedly in possession of her land for a number of years, since 1872 if her claim is to be believed. It seems that there was a dispute between her and the owners of survey No. 302 1/1 in 1928 in which she claimed that she had encroached upon a part of that survey No. By his order dated 18-5-1928, the Collector of Surat directed the occupant of survey No. 302 1/1 to refer the dispute to a civil court; and the Collector accepted Mrs. Ansell's claim of adverse possession. However the Kolis continued to pay the land revenue in respect of this disputed area. It is alleged that mainly for the purpose of financing the litigation between themselves and Mrs. Ansell, the Kolis raised a loan from one Ranchhob Kushalbbhai (for a number of years the Police Patel of the village Bhadeli), and the land was mortgaged to him. on 25-7-1929, the applicant Maganlal ~~Haribhai~~ ^{Haribhai}

purchased the land in dispute from the Kolis for a sum of Rs. 799. This sale was noted in Village Form No.6, but was wrongly shown as relating to survey No.302/2. The Kolis admitted that they were not in possession and the arrangement between them and the applicant at the time of the sale was that if as a result of the dispute pending before the revenue authorities possession was given to them; they were to deliver it to the applicant; or otherwise the applicant was to secure possession by taking suitable legal action. Mrs. Ansell approached the Collector for entering her name as the occupant in respect of the disputed area. The question was referred to the register of disputes, and after holding a regular inquiry Mrs. Ansell was entered as the occupant in accordance with the order No. RTSS/129 dated 4-4-1940. ^{A G} She was so recognized as the occupant of 6 8 out of survey No. 302 1/1. It is the applicant's contention that he was not aware of this decision, and had not ~~by given~~ been given notice of the inquiry. However, on 3-2-1941 another entry was made in Village Form No.6 cancelling the entry in regard to the applicant's purchase and showing that he had purchased land out of 302 1/1 and not 302 /2, and accordingly he was shown as the occupant of 8 acres out of survey No. 302 1/1 in the record of rights. In pursuance of his arrangement with the Kolis, and as he was not given possession, the applicant commenced a suit against Mrs. Ansell in the Court of the Second Class Subordinate Judge at Bulsar (suit No. 44 of 1941). Pending that suit Mrs. Ansell died and her son Capt. Ansell was acknowledged as her heir in the record of rights by an entry in

record of rights by an entry dated 8-10- 1942. The suit was eventually compromised, and under the compromise decree dated 14-4-1943 Capt. Ansell gave up his right, title and interest over the land excepting a small portion of some gunthas which he agreed to buy for a sum of Rs. 100. In the meantime, on 29-10-1942 the Collector granted the alluvial land measuring about 1½ 15 acres adjoining the disputed land to Capt. Ansell under section 63 of the Land Revenue Code. Capt. Ansell paid the usual occupancy price and obtained possession. The compromise decree made no reference to the alluvial land. A few days after the compromise decree-but it is alleged as a result of negotiations which were going on before the decree-Capt. Ansell had sold to Vasanas the alluvial land with other lands belonging to him including the area in dispute. The sale deed is dated 19-4-1943. This sale deed was entered in the record of rights on 2-7-1943. Thereafter, on 14-1- 1944 the compromise decree was red entered in the record of rights; and the applicant was finally treated since that date as the occupant of the 8 acres out of survey No. 302 1/1. There was naturally trouble between the applicant and Vasanas in respect of the alluvial land; and eventually Vasanas commenced suit No. 24 of 1945 against the applicant for an injunction restraining him from entering upon the suit land. The learned Civil Judge held that the applicant who was not in possession at the time when the alluvial land was sold could not be treated as the occupant, and that on the other hand Ansell's were the real occupants. He

proceeded to point out that even if Ansells could not be treated as the occupants, the sale by the Collector to them could not be challenged, and that, therefore, Vasaniias had ~~could not be said~~ proved thier title. In the result, he granted on 31-10- 1945 an injuction against the applicant. Against that decision the applicant has gone in appeal to the District Court, and the appeal is not yet descided.

2. The R.L.A. is now requested to advise wheter^h in the circumstances, the Collector's order of the year 1942 regarding grant of alluvial land can now be revised so as to anable the applicant who is the proper claimant by virtue of the sale deed to hold it.

II. O P I N I O N .

3. Under section 63 of the Land Revenue Code, when it appears to the Collector that any alluvial land, which vests under any law for the time being in force in the Crown for the purposes of the Province, may with due regard to the interests of the public revenue be disposed of, he shall offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed. The price of the land so offered shall not exceed three times the annual assesement thereof. If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked.

4. The right of an occupant under section 83 is the right of preemption to adjacent Government alluvial land for a limited price (see Dandekar's Land Tenures Vol. I p. 48; Law of Pre-emption by Kathalay p. 425). "The

"The right of pre-emption in its essence is a right that exists prior to sale, and as it is a right, generally speaking, not created by agreement of the parties, we may describe it in the language of jurisprudence as 'an antecedent right in personam arising ex lege', and as such giving rise to a corresponding antecedent obligation."

(Sanwal Das v. Garprasad, 90 P.R. 1909; see Kathaley p. 214)

At p. 60 of Mulla's Transfer of Property Act, it is stated:-

"The right of pre-emption has been defined as 'a right in the event of a sale to purchase the property upon agreed terms. It can only be exercised as to immovable property. It is purely a personal right. "

The right of pre-emption under section 63 of the Land Revenue Code is not, therefore, a right running with the land. It is a personal right vesting in the occupant of the adjoining land. In that view the applicant, who has now been acknowledged as the occupant of the adjoining land, cannot merely by reason of his present title to the occupancy claim the right even after it has been exercised.

5. In 1942 when the alluvial land was granted by the Collector, Capt. Ansell was rightly treated as the occupant. "Occupant" is defined in section 3(16) of the Land Revenue Code to mean a holder in actual possession of unalienated land, other than a tenant. "Holder" of land means one who is lawfully in possession of land, whether such possession is actual or not. In order that a person be treated as an occupant, he must, therefore, be in lawful possession ~~of the land and also in actual possession.~~

of the land and also in actual possession. Capt. Ansell was undoubtedly in actual possession. Government cannot say at this stage that he was not then in lawful possession. There may have been a compromise later; but there is not judicial finding anywhere that Ansell's were trespassers. The Collector had accepted Mr. Ansell's claim to adverse possession, and after a regular record of rights inquiry her name was entered as the occupant in respect of the disputed area of 6 8. ^{A G} Considering the intimate connection the applicant had with the land it is difficult to countenance the allegation that he had no notice of the record of rights inquiry. Under section 135 J an entry in the record of rights shall be presumed to be true until the contrary is proved. For the purposes of Government, therefore Capt. Ansell must be held to be the occupant at the time when the grant of the alluvial land was made to him on payment of occupancy price. On the other hand, the applicant himself admits that he was not in possession of the disputed area, and he got possession of that area as a result of the compromise decree dated 14-4-1943 to which effect was given as late as 14-1-1944. Although an entry in the applicant's name was made on 3-2-1942 1941, that entry had no presumptive value since he himself admits that he was not in possession; and the entry appears to be a mere attempt to secure recognition in the revenue records. The applicant, cannot therefore, be treated as the occupant in 1942 and has no claim to the right of pre-emption under section 63 of the Land Revenue Code.

6. Even assuming that Capt. Ansell could not also be treated as an occupant, the position would be that there would be no occupant of the land. The words "if any" used in section 63 reserve to the Collector the liberty of giving land to a stranger if there be no occupant, and once land is so given it would not be an integral part of the adjoining holding but can be disposed of separately. In the case of Sakeral Pitsambardas No. 1038(0/171) (Selected Decisions of the Bombay Revenue Tribunal for the period from 1st July to 31st December 1945, Part II p. 76), even before the date of the Collector's order granting the alluvial land, the occupant sold the riparian land to ⁰ another man who obtained possession thereof. The vendee applied to the Collector for the alluvial land and it was held that he had no right by purchase to it. It was further held that his right by purchase was not identical with the right of the occupant under section 63, and there was nothing to prevent the occupant from keeping the alluvial land to himself and selling the riparian holding. Similarly in this case, once the land was purchased by Capt. Ansell, he was free to sell it to any one he liked. The compromise decree made no direct reference to it, and the alluvial land cannot be included in the general description of right, title and interest in the adjoining riparian land. The right ~~and interest in the adjoining~~ of pre-emption had already been exercised, and thereafter it was open to Capt. Ansell to sell the alluvial land to whomsoever he pleased.

7. The applicant could have avoided all this trouble by taking proper steps in time. While the negotiations for sale of the alluvial land were going on in the year 1942, he could have brought a suit seeking an injunction restraining the Collector from dealing with the land in derogation of his rights. Failing that he could have at least secured his position by including the alluvial land in the compromise decree itself. Even thereafter within six years from the sale of the land to Capt. Ansell, he could have brought a suit against Government, and if so advised he may do so even now as the limitation does not seem to have expired. Instead he has joined issues with Capt. Ansell's vendees, namely, Vasanias, and the Civil Court decided the dispute against the applicant and has permanently restrained him from entering into the alluvial land.

8. In these circumstances, it would not be possible for Government to interfere at this stage with a view to revise the grant made in 1942 to Capt. Ansell. Prima facie there is no illegality, impropriety or irregularity in the Collector's order and proceedings granting the alluvial land. A Court of law has further affirmed the Collector's order. In case the applicant succeeds in his appeal, Government can of course give effect to the appellate decision; but at this stage Government would have no justification for interference, and as the matter is still sub-judice, interference would also be inexpedient.

34/- P. M. Lad

24-5

Remembrancer of Legal Affairs.

U.R. to R.D. (H.M.) No. 204, dated 24-5-47.

V.M.D./x 21-5

Office of the R.L.A.

Sales of alluvial land to strangers have been cancelled in the past after refunding the occupancy price and paying reasonable compensation for loss, actual or prospective, which dispossession may cause to him (see G.R., R.D., No. 321, dated 19.1.1903 1903). It would strengthen Government's hands in cancelling the sale in this case and also in defending the suit if one is lodged by Vasantha if a clear finding of fraud of the character described in H.M.'s minute is given by the Revenue authorities after proper inquiry. I would, therefore, suggest that a finding to this effect be first brought on record. In the meantime the appellate Court's decision would also be pronounced; and, if that decision favours the appellant we would be in a stronger position to make a re-grant to the appellant after cancellation of the sale.

Sd/- P. M. Lad

19-6

Remembrancer of Legal Affairs.

H.M. (R.)

Office of the R.L.A.

1: Introduction of
survey and settle-
ment in village
Gundikheda

Bombay Land Revenue
Code, 1879.

Suit No.8 of 1936 was for the following
reliefs viz. -

(1) a declaration that the plaintiff,
as the Inamdar was the absolute owner and
proprietor of the village of Gundikheda,

(2) a declaration that the defendant
Government was not entitled to introduce
survey settlement in the village, not to
recover any rent, assessment or land
revenue in respect of the lands in the
village,

and

(3) an injunction restraining the
defendant from doing any act inconsistent
with the absolute ownership of the
plaintiff over the village or his right
to enjoy it free of rent or revenue.

The plaintiff also applied for a temporary
injunction on the plaintiff furnishing a security
for Rs.2,000, to compensate the defendant for the
loss of income of the property in the event of
the ultimate dismissal of the suit. The suit
was dismissed by the trial court, and, on appeal,
by the High Court, the Courts holding that the Naik
of Tanda was not the absolute owner but only a lease
holder in respect of the village of Gundikheda and
was therefore not entitled to alienate it to the
deity of Rajji Mandir, and further that Govern-
ment was not deprived of its right to introduce
survey and settlement in the village merely because
it had been exempt from survey and settlement from
a period prior to 1850. The result of this liti-

gation confirms the rights of Government to introduce survey and settlement into the village and to ~~it had been exempted~~ it has levy assessment which Government sought to exercise by virtue of the orders in the Resolution of 21st December 1935. It is clear that but for the institution of the suit and the subsequent issue of temporary injunction, Government would have enforced those orders of resumption of the village and recovered rent or assessment from the year 1935-36. The lower court appreciated this position when it granted the temporary injunction subject to the condition of the plaintiff furnishing a security to compensate the defendant for the loss of income in the event of the ultimate dismissal of the suit. There is, therefore, no reason why the ~~net~~ net profits realised by the plaintiff from ~~1925-26~~ the village lands during the period from 1935-36 should not be recovered and credited to Government as in lieu of rent or assessment. In fairness, Government may also pay to the deity with effect from 1935-36 the cash allowance of Rs.100 per annum which appears to have been sanctioned ex gratia under the orders in the Resolution of 21st December 1935.

Sd/- P.M.Lad.

7-10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9821 , dated the 8th October 1947.

V.M.D./21-5

4c.

Office of the R.L.A.Cancellation of grant
of alluvial land.

Bombay Land Revenue
Code, 1879.

As advised by the Remembrancer of Legal Affairs in his last opinion dated 19-6-1947 no inquiry has been held, nor does the Commissioner's report contain any finding of fraud. It appears therefore advisable to await the result of a detailed inquiry by the Collector which should be expedited as desired by H.M. It is only when the finding is brought on record that steps for cancellation can be justly taken.

Sd/. P. M. Lad.

4-10.

~~Remembrancer~~

Remembrancer of Legal Affairs.

U.R. to H.D., No. 9787, dated the 7th October 1947.

V.R.D./21-5
40.

Office of the R.L.A.

Concession in assessment.

Bombay Land Revenue
Code, 1879.

The view taken by R.D. is correct.

On the expiry of the concession in assessment on 31st July 1947 it would be competent for Government to extend the same concession on certain conditions which may be settled in this particular case one of which may be the execution of an agreement to conform to the building regulations. If the grantee accepts the offer he will have to execute an agreement accordingly and enjoy the concession. Otherwise the concession would stand withdrawn and the grantee would be required to pay full assessment.

21/- P.M.Lai
28-10

Secy/Brncher of Legal Affairs.

U.R. to R.D., No. 10434 dated the 31st Oct. 1947.

V.M.D. / 21-5
46.

Office of the R.L.A.

Cancellation of
grant of land.

Bombay Land
Revenue Code, 1879.

The view taken by R.B. at p.250 ante is correct. In the absence of any deed evidencing the grant, there appears no legal objection to Government cancelling the grant in exercise of its revisional powers implied in the provisions of section 211, Land Revenue Code (see R.L.A.'s opinion No. 2420 dated 17-3-1938). On cancelling the grant Government can evict the grantee after refunding the occupancy price and paying the compensation for improvements, if any, made by him.

sd/- P. M. Lad.

7-10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5827, dated the 9th October 1947.

Y.M.D. /21-5
4c.

Office of the R.L.A.

Recovery of money
from a Government
servant for his
negligence :-
 Land Revenue Code,
 1879, section 26.

It is not feasible to make recovery from Mr. Peerzada as arrears of land revenue. The provisions of sections 25, 26, 27 and 28 of the Land Revenue Code, 1879, apply to revenue officer or persons formerly employed as such. Mr. Peerzada is not a revenue officer and was not treated as such for taking a bond under section 26. Consequently the institution of a civil suit against him is the only remedy open to Government. The Superintendent of Exercise may in the first instance pass a fresh order demanding the full amount from Mr. Peerzada.

CC/- P.M.Lad

14-1

Remembrancer of Legal Affairs.

U.R. to R.D. , No. 10825 , dated the 14th November 1947.

V.M.D./21-5
 4c.

The questions raised for the consideration of the Remembrancer of Legal Affairs are:-

- (1) Whether a landholder holding building plots on different conditions and having no proper agreement can be made to execute one when the period of guarantee of the existing concessions in assessment expires.
- (2) In case this liability cannot be enforced, whether the withdrawal of the concession would be in order though the built-upon area does not exceed the prescribed limit on the basis that all the plots are treated as one holding.

Question (1).- Section 67 of the Land Revenue Code, 1879, provides:

" Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the Provincial Government"

Under this section the Collector can prescribe terms or conditions only when he grants permission to use the holding for any other purpose and an agreement embodying the terms or conditions thus prescribed can be executed between Government and the holder. If different plots are allowed to be used for building purposes on different terms or conditions without any proper agreement it would not be possible to compel the holder of such plots to execute one agreement when the period of guarantee of the existing concession in assessment expires, for on the expiry of the said period of guarantee no fresh permission to continue the non-agricultural use of the plots would in law be necessary.

Question (2).- If the built-upon area does not exceed the prescribed limit, then there would be no breach of the

covenant justifying the withdrawal of the concession. The fact that all the plots are treated as one holding cannot be a valid ground for the withdrawal of the concession unless it is warranted by the terms and conditions subject to which the concession was granted.

Sd/- D.V. Vyas.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 3207 , dated the

V.M.D./21 -5
40.